

Exhibit D

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION 3:20-CV-00504-FDW-DSC
4

5 CPI SECURITY SYSTEMS, INC.,

6 Plaintiff and
7 Counterclaim Defendant,

8 vs.

9 VIVINT SMART HOME, INC.
10 f/k/a MOSAIC ACQUISITION
11 CORP.; LEGACY VIVINT SMART
12 HOME, INC. f/k/a VIVINT SMART
13 HOME, INC.,

14 Defendants and
15 Counterclaimants.
16

17 VIDEOTAPED VIRTUAL ZOOM 30(b)(6) DEPOSITION OF
18 CPI SECURITY SYSTEMS, INC. BY JOHN SHOCKNESSE

19 (Taken by Defendants/Counterclaimants)
20

21 Charlotte, North Carolina
22

23 Thursday, September 23, 2021
24

25 Reported by Andrea L. Kingsley, RPR

 Job No. CS4810616

<p style="text-align: right;">Page 74</p> <p>1 additional employees to field that increased volume 2 of calls? 3 A. No, sir. 4 Q. Is part of your department's 5 responsibility to track the response time, the wait 6 time or hold time that a customer has when making a 7 call to those departments? 8 A. Yes, sir. Again, I did not study them 9 prior so I don't know them off the top of my head. 10 Q. Just very generally, roughly speaking, 11 as of today, do you have an understanding what is 12 the average response time for CPI to respond to a 13 customer making one of those calls? 14 MR. HOBBS: Same objections. You 15 can answer to the extent you know based on 16 your personal knowledge. 17 A. Generally -- certainly the goal is we 18 want to get it as quickly as possible. Generally, 19 right now, again, we'd like to hire more people, 20 but because of COVID, it's probably within two or 21 three minutes on average. 22 Q. Going back to say the beginning of this 23 year, 2021 to the present, has that number generally 24 been roughly constant? 25 A. No. At the beginning of the year it was</p>	<p style="text-align: right;">Page 76</p> <p>1 those times and what will take place. So usually 2 it will go up a little bit, but depending on how 3 well we navigate through there depends on how far 4 that gap would take place. We would like to not 5 have a big gap is what I'm saying. 6 Q. Part of your department's goal is to 7 respond to customers quickly and reduce that 8 response time; right? 9 A. Yes, sir. 10 Q. Does CPI hire employees seasonally to 11 try to deal with that seasonal adjustment and the 12 influx of calls historically? 13 A. We do not. What we do is we model it 14 out saying that we know that call volumes go up so 15 we make sure we hire in there, we have natural 16 attrition as the fall and winter months go in, and 17 so we will usually slow down our hiring to then 18 account for it as it comes into the next year. 19 Q. Makes sense. So you maybe have some 20 hiring push in the beginning of the year or the 21 spring knowing that there's going to be natural 22 attrition later in the year, you try to address that 23 seasonality issue? 24 A. Yes, sir. 25 Q. With the increased volume of calls that</p>
<p style="text-align: right;">Page 75</p> <p>1 less, it was probably under a minute. 2 Q. Do you know what accounted for the 3 increase from the beginning of the year to today? 4 A. Again, seasonality with the business. 5 So as summer comes in, it gets a lot busier. On 6 top of that, it has been extraordinarily difficult 7 to hire people right now. So I think lots of other 8 companies in our area are struggling with the same 9 thing, so actually bringing people on. So call 10 volume is a little less but you couple that with 11 it's difficult to find people and bring them on 12 board right now. 13 Q. There's a labor shortage across the 14 country that's affecting those businesses? 15 A. Absolutely. Unfortunately. 16 Q. The seasonality number, let's say taking 17 the current labor shortage out of equation, the 18 increase in the response time in the summer, has 19 that been generally consistent year-over-year? 20 Let's leave last summer, 2020, out of that, but in 21 prior years generally the response time increases in 22 the summer due to the seasonality of the business? 23 A. That volume will definitely increase. 24 How much impact as far as wait time is really 25 pursuant to how well we're able to staff up during</p>	<p style="text-align: right;">Page 77</p> <p>1 resulted from the Black Lives Matter controversy, 2 did CPI attempt to hire additional employees to try 3 to field those calls? 4 A. Actually, when June hit, we had stopped 5 all hiring at that time because of COVID. So we 6 were under strict restrictions here in North 7 Carolina, and Charlotte in particular, so we were 8 not able to do training classes onsite here. So we 9 did not start those up again, I want to say, until 10 July I believe. Later July. But we were -- 11 unfortunately, it was -- COVID was very difficult 12 for us during those couple months. 13 Q. So due to COVID, partly due to COVID, 14 you had fewer employees than you normally would 15 historically during the summer months of last 16 summer, 2020; right? 17 A. Yes, sir. 18 Q. In connection with that controversy, 19 some CPI employees quit working for CPI; correct? 20 A. Yes. I'm aware of two. 21 Q. Two employees in these departments that 22 we've been talking about -- 23 A. Yes, sir. 24 Q. Did they indicate the reason they quit 25 was connected to the controversy?</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. HOBBS: Objection to the form.</p> <p>2 Outside the scope. Answer if you know.</p> <p>3 A. One indicated that, and another one was</p> <p>4 just upset about the people around it.</p> <p>5 Q. Was one of those people Kelley Phelps?</p> <p>6 MR. HOBBS: Same objections.</p> <p>7 A. No.</p> <p>8 Q. Do you know who she is?</p> <p>9 A. I know exactly who she is.</p> <p>10 Q. You do know she did quit working for</p> <p>11 CPI?</p> <p>12 A. Yes, she did quit working for CPI, but</p> <p>13 your question was directly related to the incident</p> <p>14 in June and that's what I was answering.</p> <p>15 Q. The reason that Ms. Phelps quit was in</p> <p>16 part related to CPI's policy of allowing customers</p> <p>17 to discriminate against CPI reps coming to their</p> <p>18 house, not to send African-American reps to their</p> <p>19 house; right?</p> <p>20 MR. HOBBS: Objection to the form.</p> <p>21 Foundation. Outside the scope. You can</p> <p>22 answer if you have personal knowledge of this</p> <p>23 subject if you know.</p> <p>24 A. Yeah, I'm not aware of that being the</p> <p>25 reason why she resigned.</p>	<p style="text-align: right;">Page 80</p> <p>1 the answer to the question.</p> <p>2 A. I have no idea what conversations she</p> <p>3 had with -- Mr. Millares was no longer working for</p> <p>4 us at that point.</p> <p>5 Q. Ms. Phelps worked in your department?</p> <p>6 A. Yes, sir.</p> <p>7 Q. How long did she work for the company?</p> <p>8 A. Almost 21 years.</p> <p>9 Q. So she had some responsibility for</p> <p>10 customer retention, right, as part of her job?</p> <p>11 A. She did.</p> <p>12 Q. Did she talk to you about the reason she</p> <p>13 quit CPI?</p> <p>14 MR. HOBBS: Same objections.</p> <p>15 A. Yeah, we had conversations about it.</p> <p>16 Q. What did she tell you?</p> <p>17 MR. HOBBS: Same objections.</p> <p>18 A. She was about to turn 50, she had been</p> <p>19 here a long time, she wanted to do something</p> <p>20 different. She was concerned about change and what</p> <p>21 was taking place here and what role she may have.</p> <p>22 We tried very hard to retain her. She gave</p> <p>23 actually a very long notice. But in the end, she</p> <p>24 left.</p> <p>25 Q. When you say change and things that were</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Did you say she was fired?</p> <p>2 A. No. Resigned. I said I am not aware</p> <p>3 that's the reason why she resigned.</p> <p>4 Q. You know who Mr. Jorge Millares is;</p> <p>5 right?</p> <p>6 A. I do.</p> <p>7 Q. He's a former employee of CPI; right?</p> <p>8 A. Yes.</p> <p>9 Q. He worked in your department when he</p> <p>10 worked there?</p> <p>11 A. Yes, sir, he did.</p> <p>12 Q. Are you aware that his deposition was</p> <p>13 taken in this case?</p> <p>14 A. I am aware of a deposition was taken</p> <p>15 from him. I don't know any details about it.</p> <p>16 Q. Mr. Millares testified that the reason</p> <p>17 Ms. Phelps quit was the reasons I just asked you</p> <p>18 about. Do you have any basis to dispute that?</p> <p>19 MR. HOBBS: I will state the same</p> <p>20 objections. It's CPI's position this entire</p> <p>21 line of questioning is outside the scope of</p> <p>22 the topics the witness was designated to</p> <p>23 testify.</p> <p>24 Subject to that objection to all of</p> <p>25 these questions, you can answer if you know</p>	<p style="text-align: right;">Page 81</p> <p>1 going on there, what are you referring to?</p> <p>2 MR. HOBBS: Same objections.</p> <p>3 A. We were trying to -- given the events</p> <p>4 that took place in June, we were trying to make</p> <p>5 sure we were listening to employees and we wanted</p> <p>6 to make sure that any concerns that they had were</p> <p>7 addressed. I mean, as we recall, it was a tough</p> <p>8 time regardless for the country with the George</p> <p>9 Floyd incident which so people were a little bit</p> <p>10 upset about it. A lot of people were very upset</p> <p>11 about it. Certainly within the call center. So</p> <p>12 trying to make sure that we were -- we were more</p> <p>13 engaging with our employees and we brought on --</p> <p>14 part of why we brought on, Kerr Putney.</p> <p>15 Q. Kerr Putney is the former police chief</p> <p>16 of the Charlotte, Mecklenburg County Police</p> <p>17 Department; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Part of the reason you brought him was</p> <p>20 an effort to attempt to address some of the issues</p> <p>21 that were related to the Black Lives Matter</p> <p>22 controversy that CPI became involved in; right?</p> <p>23 MR. HOBBS: Same objection.</p> <p>24 A. Actually, my understanding, again, I</p> <p>25 wasn't directly involved with it, but his</p>

<p style="text-align: right;">Page 82</p> <p>1 retirement had been long in the plans. So he had 2 planned on retiring quite a bit earlier, and the 3 intention was for him to come over here well before 4 then.</p> <p>5 MR. EBLN: Greg, I will jump in 6 here for just a second. We've given you 7 really broad latitude to ask questions about 8 June 2020 and customers leaving. But, I mean, 9 you guys aren't prosecuting an employment 10 action. You're getting into detailed 11 questions about why people left.</p> <p>12 MR. HERBERT: I'm going to ask you 13 to minimize the speaking objections. We can 14 talk separately outside the hearing of the 15 witness if you want. But your objection is 16 noted. I'm entitled to ask the witness any 17 question, I'm not limited by the topics in the 18 notice, I think you know that. And on top of 19 that, he has testified that he was an employee 20 who was customer retention which is 21 specifically identified as one of the topics. 22 So, you know, your objection is noted. If you 23 want to give more reasons for it, then I would 24 suggest we talk offline. But I understand the 25 basis of your objection. I disagree with it.</p>	<p style="text-align: right;">Page 84</p> <p>1 go through him or if you want to talk 2 separately off the record, we can do that on a 3 break.</p> <p>4 MR. EBLN: I appreciate that. 5 That's not what happened in my depositions.</p> <p>6 MR. HERBERT: Which is why we've 7 given each other some leeway.</p> <p>8 MR. EBLN: It's all good.</p> <p>9 Q. Mr. Shocknesse, part of the 10 responsibilities in your department is to field 11 customer calls and complaints and concerns about the 12 service that they receive from CPI; correct?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Let me ask you, are you aware of 15 customers expressing desire or request that 16 African-American CPI employees not be sent to their 17 home?</p> <p>18 A. I am aware that it has happened, yes, 19 sir.</p> <p>20 Q. You're aware that in some cases CPI 21 agreed with that request with the customer?</p> <p>22 MR. HOBBS: I will state the same 23 objection. I want to be clear that the 24 objection Mr. Eblen has stated is on behalf of 25 CPI. Our objection is specifically this is</p>
<p style="text-align: right;">Page 83</p> <p>1 I think this is related to the topic notice 2 number 1 and number 2. If it isn't, I am 3 entitled to ask it. So I would ask you to 4 please not continue with the speaking 5 objection that might be attempting to send a 6 message to the witness.</p> <p>7 MR. EBLN: I'm not attempting to 8 send anything to the witness, and you're not 9 entitled to ask the questions about anything. 10 You're entitled to ask him questions about the 11 topic.</p> <p>12 MR. HERBERT: Disagree.</p> <p>13 MR. EBLN: You're getting very far 14 afield and we've given you broad latitude, but 15 we're hitting a point where we're going to 16 instruct him not to answer. So. 17 (The court reporter off the record.) 18 MR. HERBERT: I note an objection. 19 Generally speaking, one lawyer is supposed to 20 speak for a witness for a party. I understand 21 that we have given leeway in that regard and 22 I'm happy to give leeway in that regard, but I 23 think Mr. Hobbs is primary counsel for this 24 deposition. So attorneys should be capable of 25 raising objections if you generally ask they</p>	<p style="text-align: right;">Page 85</p> <p>1 outside the scope of the topics for which the 2 witness has been designated to testify on 3 behalf of CPI. So I want to be very clear 4 that any responses to this entire line of 5 questions is on behalf of Mr. Shocknesse 6 personally, not on behalf of CPI. If the 7 witness knows the answer to this question, we 8 will give you a little bit more leeway to 9 answer but, otherwise, we're not going to 10 answer questions on that topic.</p> <p>11 MR. HERBERT: I disagree with the 12 objection but the objection is noted.</p> <p>13 Q. Mr. Shocknesse, can you answer?</p> <p>14 A. Could you ask the question again?</p> <p>15 Q. Are you aware that CPI sometimes agrees 16 with customers when they request that an 17 African-American CPI employee not be sent to their 18 home?</p> <p>19 MR. HOBBS: Same objection.</p> <p>20 A. We don't agree. I'm not aware that we 21 agree.</p> <p>22 Q. So your testimony is that that does not 23 appear anywhere in any customer account notes, any 24 indication that CPI has agreed to such a request?</p> <p>25 MR. HOBBS: Same objections.</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Your question was do we agree with. I 2 interpret that as do we agree with that request. I 3 don't agree with that request, nor do I believe the 4 company does. 5 Q. Let me ask, Mr. Jorge Millares testified 6 that, in fact, the company has agreed with customers 7 not to send an African-American employee to their 8 homes. Do you have any basis for disputing that? 9 MR. HOBBS: Same objections. 10 Outside the scope. 11 A. Are you saying we acquiesced to a 12 request or agreed to a request to me are two 13 different things. 14 Q. That you honor that request. 15 A. I am aware afterwards that there's been 16 a couple incidents where the customer requests, and 17 actually Kelly Phelps was the one that advised the 18 reps to go ahead and put that request in. We've 19 also had requests for customer a to have an 20 African-American technician and we also honored 21 that request. I'm only aware of I think three or 22 four in the last I don't know how many years. And 23 that was afterwards, after Ms. Phelps made that 24 comment, and we looked into it and -- but she 25 admitted she's the one that made that call. And we</p>	<p style="text-align: right;">Page 88</p> <p>1 We've also had a request for a female technician 2 which we didn't have so we were unable to honor. 3 Q. Out of the three or four that you 4 testified, how many of those were the customer 5 requesting an African-American not come to their 6 house? 7 MR. HOBBS: Same objections. 8 A. Again, I want to say it was -- I think 9 it was two but it could be three. One of those, 10 the only reason why I remember, one of them was 11 there was a long conversation that took place with 12 the customer that the wife had been raped, I want 13 to say two years prior, and had some PTSD and was 14 very concerned about it. I know that was why that 15 request was honored. 16 Q. After you learned of the incidents, did 17 CPI change its policy with respect to any of these 18 customers? 19 MR. HOBBS: Same objections. 20 A. We do not have a policy on it. We do 21 not -- right now, if anybody were to ask for 22 something, they would talk to a supervisor or 23 manager and that would be escalated that we want to 24 make sure we figure out what is going on. So we do 25 not have a policy to send whether it's an</p>
<p style="text-align: right;">Page 87</p> <p>1 had lots of conversation about it as far as what's 2 the right thing to do or not. You can make an 3 argument to say that is it safe for an 4 African-American person to go to a home that 5 somebody specifically asked do not send. Is that 6 safe for a technician? Unfortunately, there's bad 7 people out there and there's people that have their 8 own opinion on who should be going to their home 9 and we can't control that. 10 Q. So your testimony is that CPI only 11 agreed to that, that you're aware of, in two or 12 three incidents? 13 A. I think I said three or four, but, 14 again, this is ballpark and this was afterwards, 15 again, I am not aware of any of them when they 16 occurred. I'm aware of it well afterwards when we 17 had some conversations about it. Then we just 18 tried to figure out how many times it happened, and 19 in the end, the only time we could find it was 20 three or four I think. And one of those -- when I 21 say three or four, that was a specific request 22 whether it was a white or an African-American 23 technician and so we must say there were one or two 24 requests -- that the customer requested an 25 African-American technician of which we honored.</p>	<p style="text-align: right;">Page 89</p> <p>1 African-American or white technician they request. 2 Q. So it's handled on a case-by-case basis? 3 A. Well, if that request has come up, it's 4 a case-by-case, but I'm not aware of one that has 5 taken place in the last year. 6 Q. How were the two or three that you 7 mentioned resolved or changed in any way? 8 MR. HOBBS: Same objections. 9 A. Again, Kelly Phelps was involved with 10 telling reps to go ahead and do that. She has 11 advised us afterwards. 12 Q. I guess what I'm asking is what happened 13 after that? Did CPI then change its prior agreement 14 to honor the request? 15 A. Again, we have no formal policy on it at 16 all. We never did. This was Kelly made a call on 17 accounts, never had a formal policy, and now 18 that -- we just tell reps if somebody asks for 19 that, that needs to be escalated, we need to be 20 aware of it. Find out what the reason is, and then 21 the manager gets involved. 22 Q. So your testimony is you don't know with 23 respect to those two or three incidents, you 24 testified you don't know if CPI is still continuing 25 to honor that agreement or if it has changed its</p>

<p style="text-align: right;">Page 90</p> <p>1 position on that?</p> <p>2 MR. HOBBS: Same objections.</p> <p>3 A. Again, we don't have a -- we would not</p> <p>4 be honoring and it would have come to light in the</p> <p>5 last year because we've, again, advised reps they</p> <p>6 can't do that without talking to a manager, the</p> <p>7 manager would have to escalate it as well as our</p> <p>8 operations team is aware of it. I feel very</p> <p>9 confident that we would be aware of it if it</p> <p>10 happened in the last year.</p> <p>11 Q. But you can't say with those incidents</p> <p>12 whether or not CPI is still agreeing to honor those</p> <p>13 requests?</p> <p>14 MR. HOBBS: Same objections.</p> <p>15 A. When you say CPI, I can't say if an</p> <p>16 individual rep does something and does not follow</p> <p>17 what we've explained to reps to make sure that a</p> <p>18 manager is made aware. Unfortunately, a company</p> <p>19 with this many people, somebody can do something</p> <p>20 individually. I am not aware of anybody doing</p> <p>21 that.</p> <p>22 Q. So with a company with as many employees</p> <p>23 that CPI has, sometimes employees take actions that</p> <p>24 they are not supposed to take according to the</p> <p>25 company's instructions or guidelines; fair enough?</p>	<p style="text-align: right;">Page 92</p> <p>1 (Recess taken.)</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 11:40 a.m. We're back on the record.</p> <p>4 Q. Mr. Shocknesse, I just wanted to</p> <p>5 confirm, based on your testimony earlier, I'm</p> <p>6 correct that CPI has not done a quantification of</p> <p>7 the total amount of revenue that was lost related to</p> <p>8 the controversial comments by Mr. Gill last summer,</p> <p>9 is that correct?</p> <p>10 A. I'm saying I'm not aware, me personally,</p> <p>11 I'm not aware.</p> <p>12 Q. What about in terms of the other reasons</p> <p>13 for cancellation that you mentioned, you talked</p> <p>14 about the different percentages of the reasons that</p> <p>15 folks historically cancel their contract with CPI, I</p> <p>16 believe you indicated that CPI has not broken down</p> <p>17 monetarily the total amount of losses over any</p> <p>18 particular period for each particular category; is</p> <p>19 that a fair statement?</p> <p>20 A. Well, I think when we were talking about</p> <p>21 it, what I said is we will attribute that monthly</p> <p>22 dollar amount, a singular month, but that I'm not</p> <p>23 aware of and haven't done any what's that lifetime</p> <p>24 value of that customer, what's that -- if they had</p> <p>25 X number of months remaining. So customer X</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. HOBBS: Same objections.</p> <p>2 Outside the scope of this witness.</p> <p>3 Q. You can answer.</p> <p>4 A. I'm sure it happens, yes.</p> <p>5 MR. HERBERT: Let's take another</p> <p>6 short break. We'll go until a lunchtime break</p> <p>7 later unless anybody is particularly hungry</p> <p>8 now, it's an early time for me, but if anyone</p> <p>9 wants to go to lunch we can do that.</p> <p>10 Otherwise, I wouldn't mind going for another</p> <p>11 45 minutes or so and then taking a lunch</p> <p>12 break.</p> <p>13 Q. Does that work for you, Mr. Shocknesse?</p> <p>14 A. Works for me.</p> <p>15 MR. HERBERT: Is that okay for you,</p> <p>16 Mr. Hobbs?</p> <p>17 MR. HOBBS: That works for me. I</p> <p>18 will insist on a lunch point, but I let you</p> <p>19 determine when that is, Greg.</p> <p>20 MR. HERBERT: If at any point</p> <p>21 anyone is starving, let me know and I'm fine</p> <p>22 with being flexible. Let's take 10 minutes</p> <p>23 now and come back at 11:35.</p> <p>24 THE VIDEOGRAPHER: The time is</p> <p>25 11:25 a.m. We're off the record.</p>	<p style="text-align: right;">Page 93</p> <p>1 cancels in a certain month, they were paying \$50 a</p> <p>2 month, we will attribute \$50 for that month of a</p> <p>3 cancellation. That's what me and my team, that's</p> <p>4 all I'm aware of.</p> <p>5 Q. In addition to a monthly basis, do you</p> <p>6 gross that up, in effect, to analyze it on a yearly</p> <p>7 basis, or do you just look at it on a month-by-month</p> <p>8 basis?</p> <p>9 A. We look at it month-by-month.</p> <p>10 Q. So your attempt to measure changes month</p> <p>11 over month --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- direction things are going?</p> <p>14 A. Yes, sir.</p> <p>15 Q. So if I were to ask you in the last</p> <p>16 let's say the last 12 months, going back from today,</p> <p>17 has CPI quantified the total amount of losses due to</p> <p>18 cancellations in the competition category, would you</p> <p>19 be able to give me that number?</p> <p>20 MR. HOBBS: Objection to the form.</p> <p>21 Outside the scope. You can answer.</p> <p>22 A. I don't have the number off the top of</p> <p>23 my head, no, sir.</p> <p>24 Q. You don't know whether or not CPI does</p> <p>25 that quantification?</p>